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GEI-082

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: : B. Fubara
F. JOLY et al :
Serial No.: 09/700,120 : Group: 1615
Filed: November 8, 2000 :
For: PHARMACEUTICAL...AND USES :

475 Park Avenue South
New York, N.Y. 10016
July 16, 2004

RESPONSE

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I hereby certify that this communication is being deposited with the United States Postal Service as "Priority Mail" Post Office Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

D. Maloney

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Responsive to the office action of April 20, 2004, Applicants request reconsideration of the application in view of the remarks presented herein.

The claims in the application are claims 57 and 58, all other claims having been cancelled.

Claims 57 and 58 were rejected under 35 USC 103 as being obvious over the Japanese '057 reference. The Examiner states that the Abstract of the reference discloses a composition comprising seawater, water saccharides, a fruit juice protein, an amino acid, vitamins, vegetable extracts, carbonic acid, a flavoring agent, a sweetener, etc. The Examiner states that the reference discloses 3 to 5% of seawater in the soft drink which meets the limitation of the lower limit of 3 to 95% by weight of seawater. The Examiner

notes that the method administers to a warm-blooded animal a composition that is disclosed and is administered as a soft drink and therefore, the claims are not patentable over the prior art.

Applicants vigorously traverse this ground of rejection since the Examiner has overlooked the fact that Applicants are not claiming a composition but, rather, a method of treating warm-blooded animals to inhibit activation of mastocyte or degranulation of basophils by administering to warm-blooded animals in need thereof an amount of Applicants' composition comprising 3 to 95% by weight of seawater and 0.001 to 10% by weight of at least one basic amino acid selected from the group of specific acids in an amount sufficient to inhibit activation of mastocytes and degranulation of the basophils and this method is in no way claimed or suggested by the Japanese reference that is directed to a soft drink. There is no medical treatment whatsoever taught by the reference.

The Examiner's attention is directed to Ex parte Hessel, 137 USPQ, 384 wherein claims directed to a method of controlling and eradicating nematodes was patentable over a reference showing insecticidal or fungicidal activity. Applicants are treating a specific condition not taught by the reference and one skilled in the art with the teaching of a soft drink would in no way be led to Applicants' method of treatment claims. Therefore, the reference in no way anticipates or renders obvious Applicants' invention and withdrawal of this ground of rejection is requested.

In view of the above remarks, it is believed that the claims clearly point out Applicants' patentable contribution and favorable reconsideration of the application is requested.

Respectfully submitted,
Muserlian, Lucas and Mercanti


Charles A. Muserlian, 19,683
Attorney for Applicants
Tel.# (212) 661-8000

CAM:ds
Enclosure